



**THE COMMONWEALTH OF MASSACHUSETTS
AUTO DAMAGE APPRAISER LICENSING BOARD**

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CHAIRMAN

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LIEUTENANT GOVERNOR

JOSEPH COYNE
RICHARD STARBARD
WILLIAM E. JOHNSON
LYLE M. PARE

**Minutes of Meeting of the Board held on September 6, 2017, Approved by the Board at the
October 3, 2017, Board Meeting; Motion of Board Member Richard Starbard and
Seconded by Board Member William Johnson. The Motion Passed by a Vote of: 4-0,
Chairman Cox Abstained.**

September 6, 2017, Minutes of Board Meeting
Held at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Cox
Joseph Coyne
William Johnson
Richard Starbard
Lyle Pare

Attending to the Board:

Michael D. Powers, Counsel to the Board
Steven Zavackis, Executive Secretary

Proceedings recorded by:

Jillian Bukhenik of the Alliance of Automotive Service Providers of Massachusetts (AASP) (Audio/Video). Chris Gervais of MAPFRE (Audio/Video). Jim Steere, Hanover Insurance Company (Audio). Evangelos Papageorg of EXP Consulting (Audio/Video).

Call to Order:

Chairman Cox called the meeting to order.

Review of minutes:

A review of the minutes of the Board Meeting held on July 25, 2017, was taken by the Board, and Chairman Cox called for a motion to approve the minutes. Board Member Coyne pointed out that the draft minutes were not accurate. The draft minutes referred to a discussion with Mr. Haddad and indicated that he requested permission to speak with the Board and identified

himself as an “owner of a car insurance company” when in fact Mr. Haddad identified himself as the owner of a “rental car company.” Mr. Coyne stated that there was another area of inaccuracy that needed to be corrected. Board Legal Counsel Michael D. Powers thanked Board Member Coyne for his review and suggestion and pointed out that was the very reason for the minutes being presented to the Board Members in a draft format, so the Members of the Board could review them and suggest corrections. He informed the Board that at the previous meeting there was an issue raised by Board Member Starbard about licensed motor vehicle damage appraisers submitting appraisals providing for partial payment for labor and paint on a damaged item such as a dent to a quarter panel of a motor vehicle and that Legal Counsel Powers attempted to capture in the minutes the position that Board Member Starbard had made, but was unsure whether the draft minutes accurately described Mr. Starbard’s position and requested that Board Member Starbard review that portion of the minutes and make any changes that he deemed necessary. Legal Counsel Powers suggested that Board Members Coyne and Starbard review the minutes further, make any edits that they deemed were necessary, send the amendments to Mr. Powers, and the minutes would be presented at the following Board Meeting. Board Members Coyne and Starbard agreed. The vote to approve the Board minutes of the July 25, 2017, Board meeting was not taken and the approval of the minutes tabled and taken up at the next Board meeting.

Mr. Adam Haddad asked permission to speak to the Board and permission was granted by Chairman Cox. Mr. Haddad asked Chairman Cox what just transpired and Chairman Cox responded that the Board needed to amend the previous Board meeting minutes and at the next Board meeting there would be two sets of Board minutes for approval, the minutes of the meeting today and the minutes for the July 25, 2017, Board meeting.

Report on the next Part-II examination for motor vehicle damage appraiser:

Board Member Richard Starbard reported that at the Part-II examination that was held on August 30, 2017, in Westwood, Massachusetts there was a very high failure rate. Mr. Starbard reported that of the 50 people who took the examination 22 passed the examination at that time.

Mr. Starbard informed the Board that people are just signing-up immediately after they receive notice of their failures on the Part-II examination, some people have taken the examination three and four times in a row. People who fail the examination should be taking courses for motor vehicle damage appraising before they sign-up for another examination. One fellow who failed the last examination called Mr. Starbard on the telephone and asked what should he do to prepare for the examination and Mr. Starbard informed him that he should take a course.

Board Member Coyne observed that the ADALB’s enabling statute [M.G.L. c. 26, § 8G] precludes an individual from taking the examination within six months of failing it. Board Member Starbard agreed and stated that many of these people, who fail the examination, need additional training before re-taking the examination.

Board Member Coyne suggested the Robert Hunter, Supervisor of Producer Licensing for the Division of Insurance, should insert the statutory language into the letter which notifies an examinee that he/she has failed.

Executive Secretary Steven Zavackis reported that this statutory provision has not been enforced in the past, in fact some people have taken the examination five or six times.

Board Member Starbard thanked Pete Smith of MAPFRE Insurance Company and John Michael Dillon from Progressive Insurance Company for their diligent assistance with the examination.

Board Member Starbard requested that Robert Hunter send the Board Members the standard letter that the Producer Licensing Unit sends to an examinee notifying him/her of the failure on the Part-II examination, so the Board can review it. He also advised that Mr. Hunter notify the people who recently failed the Part-II examination that they are ineligible to take the examination for six months from the date of the failure. There were 50 examinees of whom 28 failed with 7 pending a call, the last examination and Mr. Hunter should notify them that they cannot take the examination again for six months. ADALB Executive Secretary Steven Zavackis responded that he would contact Mr. Hunter and relay the directive.

Mr. Starbard reported that he and Board Member Johnson have been working with the Springfield Technical Community College (STCC) developing a course for Part-I of the examination for motor vehicle damage appraiser. Currently there is nothing available in this area of the Western part of the state. Mr. Starbard suggested that he and Board Member Joseph Coyne could go the STCC and meet with officials of the school to get approval for Part-II examination at the facility.

Board Member Johnson added that the Part-I course would be a sixty hour course, classroom space would need to be set-aside, and the venue would make it more convenient for applicants in the Western part of the state. Member Johnson volunteered that he could contact officials at the STCC and inquire whether they could accommodate facilities for a Part-II examination. Member Johnson queried: When do you want to have a Part-II examination out there? Board Member Starbard replied possibly in October and suggested a date of October 11, 2017.

Attorney Samantha Freedman, an expert in motor vehicle damage appraising law and the Legislative Attorney for Geico Insurance company, requested permission to speak to the Board and Chairman Cox granted permission. Attorney Freedman informed the Board that her company could provide assistance in holding a Part-II test. Chairman Cox thanked Attorney Freedman for her offer.

Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda:

Board Member Starbard reported that he drafted an Advisory Ruling addressing the issue of licensed motor vehicle appraisers improperly writing appraisals for partial paint or partial re-finish for a damaged part. Mr. Starbard submitted copies of his proposal for the Board's review and consideration which was the following:

TO ALL CONCERNED PARTIES

Re: Advisory Ruling 2017-2

The Auto Damage Appraiser Licensing Board (ADALB or Board) is authorized to oversee all motor vehicle damage appraisers in the Commonwealth of Massachusetts pursuant to M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq., “The Appraisal and Repair of Damaged Motor Vehicles” as promulgated by the ADALB. Pursuant to its authority the ADALB is authorized to issue licenses to all motor vehicle damage appraisers in the Commonwealth (licensed appraisers or appraiser) 212 CMR 2.02, regulate the manner of conducting motor vehicle damage appraisers in the Commonwealth 212 CMR 2.02, regulate the manner of conducting motor vehicle damage appraisals 212 CMR 2.04, and to issue Advisory Rulings pursuant to 212 CMR 2.01(3) and M.G.L. c. 30A, § 8. It is the intention of the ADALB to issue an Advisory Ruling consistent with 212 CMR 2.00 and M.G.L. c. 26, § 8G to be followed by licensed appraisers.

Pursuant to its authority, the ADALB voted by a majority vote at the Board’s meeting held on XXXXXXXX, to adopt this Advisory Ruling.

ADVISORY RULING

212 CMR 2.04(e) states “No appraiser shall modify any published manual (*i.e.*, Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties.”

The Auto Damage Appraiser Licensing Board has passed a motion declaring, that partial refinishing is considered to be modification of a published manual and may not be included on an appraisal without prior negotiation.

This Advisory Ruling shall be effective upon posting on the Auto Damage Appraiser Licensing Board public website. Failure to comply with this ruling could result in fines and penalties as provided by law.

For the ADALB,

Michael D. Powers, Esq.
Legal Counsel to the Board

Board Legal Counsel Powers recommended that the Board take time to review the proposed Advisory Ruling to make sure it captured in clear and unambiguous words the issue that the Board felt needed to be addressed. Board Member Johnson agreed, and said that the proposal may need to be tweaked and that he would take time to review it and report back at the next Board meeting with any proposed edits or comments that he had.

Chairman Cox declared that the proposed Advisory Ruling would be placed on the agenda for the next Board meeting.

Attorney Kara Lazelere, of the law firm ForbesGallagher, requested to speak to the Board and Chairman Cox granted permission. Attorney Larzelere informed the Board that Attorney Owen Gallagher sustained a disabling injury to his foot and would be unable to attend the administrative hearing that was scheduled for September 12, 2017, against The Hanover Insurance Company and licensed motor vehicle damage appraisers Paul Horton and James Steere, and therefore requested a postponement and the Board reschedule the hearing for another date.

Board Legal Counsel informed Chairman Cox that as a point of order, the administrative hearing that was underway was separate from the Board's business conducted during regularly scheduled Board meetings and that the Board should discuss the scheduling of the administrative hearing after they conclude their regularly scheduled Board meeting. Chairman Cox agreed and informed Attorney Lazelere that the matter would be discussed by the Board after the Board meeting was adjourned and she would be notified about the Board's decision.

Next scheduled meeting:

Chairman Cox asked for a date for the next Board meeting. The Board determined that the next regularly scheduled Board meeting would be held on October 3, 2017, at 9:30 AM at 1000 Washington Street, Boston, Massachusetts.

Board Member Starbard informed the Board that it came to his attention an auto body repair shop in Texas did not repair a car based upon the recommended Manufacture's repair procedures. The reason the auto body shop did not follow the recommended Manufacture's repair procedures was because an insurance company refused to pay for those types of repairs. After it was repaired, the car was sold to a third party, was involved in a serious accident, and the victim alleged that because the car was not properly repaired based upon the Manufacture's recommended procedures, the failure to follow those repair procedures caused the accident. The third party victim sued the original auto body repair shop wherein the car had been repaired. Mr. Starbard suggested that the Board issue an Advisory Ruling directing appraisers that a Manufacturer's recommend repair procedures shall be followed.

Board Member Coyne responded that he did not know how one could enforce a recommendation. It is akin to recommending the sun shine tomorrow. A recommendation by its terms cannot be enforced.

Chairman Cox observed when one changes the word from "may" to "shall" the language becomes mandatory. Chairman Cox concluded the discussion by requesting Board Member Starbard prepare a proposed Advisory Ruling and present it at the next Board meeting and Mr. Starbard agreed.

Chairman Cox asked if there was any other business for the Board's consideration and Mr. Adam Haddad requested permission to speak to the Board and Chairman Cox granted permission.

Mr. Haddad informed the Board that at the last Board meeting he appeared and informed the Board that he had paid a \$39,000 premium to MAPFRE insurance to insure rental cars that he owned and were in need of repair. Since that Board meeting, Mapfre Insurance Company did not

take an action. Mr. Haddad declared that he asked the Board at the previous meeting to take action against MAPFRE Insurance Company.

Attorney John Callahan, an expert in insurance laws and legal representative of MAPFRE Insurance Company, asked permission to speak to the Board. Attorney Callahan informed the Board that the Board had no reason to have this type of matter brought before the Board. The company that Mr. Haddad refers to is an auto rental company which is a MAPFRE insured.

Chairman Cox declared that this matter may not be a matter that could be heard by the Board.

Mr. Haddad replied that under the Board's regulation 212 CMR 204(1)(e) the Board would have jurisdiction. Board Member Starbard corrected Mr. Haddad, by pointing out the issue would be covered under 212 CMR (1)(a) and Mr. Haddad agreed.

Mr. Haddad explained that MAPFRE Insurance Company refuses to assign an appraiser.

Mr. Starbard suggested that Mr. Haddad could file a complaint against the senior motor vehicle damage appraiser employed by MAPFRE Insurance Company.

Attorney Callahan interjected that the Members of the Board should not be providing legal advice.

Board Member Johnson replied that he did not think it was wrong for the Board to provide guidance on procedure. Mr. Johnson asserted that Mr. Haddad had been previously informed about the proper manner of proceeding with a complaint.

Board Member Starbard responded that Mr. Haddad could file a complaint with the Office of the Attorney General for the Commonwealth of Massachusetts and Mr. Starbard reaffirmed the position taken by Board Member Johnson.

Chairman Cox announced that the matter was concluded and the Board is would be entering an executive session.

Executive session:

Before entering the executive session Chairman Cox informed the public that the Board was about to vote to enter the executive session and would not be returning to the public session and then made the following statement:

The Board is about to enter the executive session to review Complaints 2017-7, 2017-8, 2017-9, and 2017-10, filed against licensed appraisers. Such discussions during the executive session are allowed for under M.G.L. c. 30A, §21 (a)(1) and in accordance with the Office of the Attorney General's Open Meeting Law (OML) decisions such as *Board of Registration in Pharmacy Matter*, OML 2013-58, and *Department of Public Safety*

Board of Appeals Matter, OML 2013-104. Section 21 (a) states “A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

The attorneys for the licensed appraisers requested these matters be heard in the executive session.

Chairman Cox called for a roll-call vote to enter the executive session which included the announcement that the Board would adjourn in the executive session and not return to the public session. Chairman Cox asserted that attorneys for licensed appraisers had notified the Board that they wanted their matters heard in the executive session. The motion to enter the executive session and adjourn in the executive session was made by Board Member Joseph Coyne and seconded by Board Member Johnson, the motion passed by a roll call vote of: 4-0 with Chairman Cox abstaining.

Executive Session:

Complaint 2017-7:

The complaint was filed against an insurance company and did not name a licensed motor vehicle damage appraiser. Board Member Lyle Pare observed that the ADALB only has jurisdiction to review complaints filed against named licensed appraisers and not generally against insurance companies and, therefore, the complaint should be dismissed.

A motion was made by Board Member Joseph Coyne to dismiss the complaint, the motion was seconded by Board Member Pare and by a vote of: 4-0 with Chairman Cox abstaining the Board dismissed the complaint.

Complaint 2017-8:

Attorney John Callahan legal counsel for the insurance company and legal counsel for the appraiser appeared before the Board. Before any discussions began Board Legal Counsel Powers informed the Board that Attorney Callahan in his response to the complaint requested that Board Member Starbard recuse himself because Mr. Starbard was engaged in a civil law suit against the insurance company. Board Member Starbard recused himself and left the executive session.

Attorney Callahan asserted that the previous conduct of the auto body appraiser was threatening towards the insurance company's appraiser. The appraiser informed the Board that he had attempted to review the damage appraisal but because he was previously threatened by the appraiser at the auto body shop, he scheduled the appraisal at one of the insurance company's locations and the auto body shop appraiser refused to take the car to that location for an appraisal. Although he made a good faith effort to appraise and negotiate the damage the auto body shop appraiser frustrated the efforts by the misconduct.

Attorney Callahan asserted that the insurance company appraiser offered several safe locations for the appraisal, at insurance company's facility, the insured's home or the insured's place of business. The ADALB regulation does not require an appraisal to be conducted at a particular location and, therefore, the Board lacked jurisdiction over the subject matter of the complaint and insisted that if indeed the complaint established sufficient facts of some type of violation, something he did not agree with, then the jurisdiction would be within the Division of Insurance or the Board of Standards.

Board Member Coyne made a motion to dismiss, seconded by Board Member Pare and the motion passed by a vote of: 3-0, with Chairman Cox abstaining and Board Member Starbard not voting because he abstained and was not present for the vote.

Complaint 2017-9:

This complaint was filed against an appraiser employed by an independent insurance company. The owner of the company appeared and responded to the complaint. The owner expressed his extreme displeasure of appearing before the Board on what he believed was a frivolous complaint. The owner of the company said that his employee did not write the original appraisal and said he did not have any involvement with the person filing the complaint. His company received an assignment from the insurance company and before an appraiser went to the auto body shop where the damaged motor vehicle was located, the assignment was cancelled by the insurance company.

A person from 126 Auto Body kept calling his company and every time the person called he was informed that the company did not have an assignment from the insurance company to appraise

the motor vehicle. The owner informed the Board that someone from AASP-Massachusetts came into his company's office and gave an employee a copy of a document which instructs "How to file a complaint with the ADALB." He asked the Board if they had authorized such a document and Chairman Cox responded that the Board did not. Board Member Starbard replied that the AASP-Massachusetts was simply performing a service to their members and instructing them on the proper manner of filing a complaint with the ADALB.

The owner responded by asserting that in over thirty-years of appraising motor vehicle damage he has always negotiated with the other appraiser and he never found a need to file a complaint with the ADALB. Instead of the ADALB encouraging people to file a complaint, the ADALB should be notifying appraisers to put their big-pants on and to do their jobs and negotiate the appraisals. He concluded by stating it was a total waste of his time appearing before the Board on such a frivolous complaint and said the Board has to develop a better procedure than the current one requiring licensed appraisers to appear on every ridiculous complaint that may be filed against them.

Board Member Johnson made a motion to dismiss the complaint, the motion was seconded by Board Member Coyne, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Motion to adjourn:

Board Member Coyne made a motion to adjourn which was seconded by Board Member Johnson, and the motion passed by a vote of: 3-0, with Chairman Cox abstaining and Board Member Starbard not present for the vote.

Whereupon, the Board's business was concluded.

The form of these minutes comports with the requirements of M.G.L. c. 30A, §22(a).

List of Documents provided at the Board meeting:

- 1. Proposed Advisory Ruling 2017-2.**